

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0690 MVE**

**Motor Vehicle Excise Tax**

**For Tax Period: 12/31/96 Through 09/30/98**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Motor Vehicle Excise Tax – Imposition**

**Authority:** IC 9-13-2-78, IC 9-18-2-1

Taxpayer protests the imposition of the motor vehicle excise tax on his 1994 Chevrolet.

**STATEMENT OF FACTS**

Taxpayer purchased his 1994 Chevrolet in November 1995. Taxpayer purchased the vehicle in Illinois and paid Illinois sales tax. Taxpayer licensed and registered the vehicle in Illinois from the date of purchase until July 14, 1998, when he licensed and registered the vehicle in Indiana. Taxpayer was assessed motor vehicle excise tax in Indiana beginning at the date of purchase. Taxpayer protested this assessment. Additional relevant facts will be provided below, as necessary.

**I. Motor Vehicle Excise Tax – Imposition**

**DISCUSSION**

Pursuant to Indiana Code section 9-18-2-1:

- (a) Within sixty (60) days of becoming an Indiana resident, a person must register all motor vehicles owned by the person that:
  - (1) are subject to the motor vehicle excise tax under IC 6-6-5; and
  - (2) will be operated in Indiana.

Taxpayer claims he was not a resident throughout the assessment period, and therefore, he was not required to register the vehicle in Indiana. Taxpayer cites Indiana Code section 9-13-2-78 which defines “Indiana resident” as a person who is one of the following:

- (1) A person who has been living in Indiana for at least one hundred eighty-three (183) days during a calendar year and who has a legal residence in another state. However, the term does not include a person who has been living in Indiana for any of the following purposes:
  - (A) Attending an institution of higher education.
  - (B) Serving on active duty in the armed forces of the United States.
- (2) A person who is living in Indiana if the person has no other legal residence.
- (3) A person who is registered to vote in Indiana.
- (4) A person who has a child enrolled in an elementary or secondary school located in Indiana.
- (5) A person who has more than one-half (1/2) of the person’s gross income derived from sources in Indiana ... However, a person who is considered a resident under this subdivision is not a resident if the person proves by a preponderance of the evidence that the person is not a resident under subdivisions (1) through (4).

Taxpayer claims he was not an Indiana resident as defined by any of the five, above-listed scenarios. Taxpayer argues he was not living in Indiana during the assessment period. He also argues he had a legal residence in Illinois. And otherwise, he did not meet the five factors listed above.

Taxpayer concedes he had been an Indiana resident prior to the assessment period. Taxpayer claims he was temporarily transferred, by his employer, to Illinois. Taxpayer’s employer continued to withhold Indiana taxes throughout the assessment period. Taxpayer claims he mistakenly believed this was appropriate because he maintained an Indiana post office box and intended to eventually return to Indiana. Taxpayer’s tax preparer has stated she mistakenly believed Indiana returns needed to be filed because Indiana withholding taxes were deducted from the taxpayer’s pay even though he resided in Illinois and derived all income from an employer in Illinois.

The Department generally views the filing of Indiana full-year resident income tax returns as a concession of Indiana residency. Taxpayer’s tax preparer has agreed, if necessary, to resubmit all tax forms to correct the mistaken income tax filings both in Indiana and Illinois. Given the facts of this case, the Department agrees the taxpayer acted appropriately in licensing and registering the vehicle in Illinois throughout the assessment period.

### **FINDING**

Taxpayer’s protest is sustained.